

**LOUISIANA REVISED STATUTES TITLE 6
CHAPTER 14 RESIDENTIAL MORTGAGE BROKERS
AND LENDERS
PART I. GENERAL PROVISIONS**

(As amended by the 2005 Act No. 235 regular session of the Louisiana Legislature)

§1081. Short title

This Chapter shall be known and may be cited as the "Residential Mortgage Lending Act".

§1082. Purpose

The Legislature of Louisiana does hereby declare that it is in the best interest of the citizens of the state to protect consumers in the most important financial investment most will make, the purchase of a home, by requiring the licensing and certification of residential mortgage lenders. The purpose of this Chapter is to promote the safety and welfare of the people of the state by providing for regulatory oversight and by establishing educational requirements in a professional field in which unqualified individuals may injure or mislead the public.

§1083. Definitions

As used in this Chapter:

- (1) "Board" means the Residential Mortgage Lending Board.
- (2) "Commissioner" means the commissioner of the office of financial institutions.
- (3) "Consumer" means a natural person who enters into or seeks to enter into a residential loan transaction for a personal, family, or household purpose.
- (3.1) "Federally related mortgage loan" means an extension of credit to a consumer secured by a first mortgage on residential immovable property: including a mobile home which will be immobilized pursuant to R.S. 9:1149.4, located in this state, and designed principally for the occupancy of from one to four families; and which is one of the following:
 - (a) An extension of credit made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by any lender which is regulated by any agency of the federal government.
 - (b) An extension of credit made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the federal Department of Housing and Urban Development, or any other agency of the federal government or under or in connection with a housing or urban development program administered by the Department of Housing and Urban Development or a housing or related program administered by any other such agency.
 - (c) An extension of credit intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation.
 - (d) An extension of credit made in whole or in part by any creditor, as defined in Section 103(f) of the federal Consumer Credit Protection Act (15 U.S.C. S.1602(f)), who makes or invests in consumer real estate loans aggregating more than one million dollars per year.
- (4) "Mortgage broker" means any person who, directly or indirectly, for compensation or the expectation of compensation, negotiates, places, or finds, or offers to negotiate, place, or find a residential mortgage loan for another person. "Mortgage broker" also shall include:
 - (a) An approved Federal Housing Administration loan correspondent.
 - (b) A residential mortgage lender who closes a residential mortgage loan in his own name but for

whom the funding for the loan is provided by a third party lender in a process known as table funding.

(5) "Mortgage lender" means any person who, directly or indirectly, originates or makes, or offers to originate or make, a residential mortgage loan for another person.

(6) "Originator" means a natural person who is an employee of a mortgage broker, mortgage lender, or person exempt from licensure, who is not acting as a mortgage broker as defined in this Section or as a mortgage lender as defined in this Section, who interviews the consumer in connection with the consumer's application for a residential mortgage loan. "Originator" does not include employees of a licensed mortgage broker or mortgage lender, or employees of a person who is exempt from licensure under the provisions of Part II of this Chapter, who perform clerical duties in connection with residential mortgage loan transactions, including but not limited to collecting financial information and other related documents that are part of the application process, ordering verifications of employment, verifications of deposits, requests for mortgage payoffs, and other loan verifications, appraisals, inspections, or engineering reports, or who perform the functions of a loan processor, at the direction of and subject to the supervision of the mortgage broker, mortgage lender, originator, or person exempt from licensure, who is responsible for such direction and supervision.

(7) "Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity, or other group of individuals however organized.

(7.1) Repealed by Acts 2001, No. 617, § 3, eff. June 22, 2001.

(8) "Principal stockholder" means any person owning ten percent or more of the outstanding stock of a corporate mortgage broker or mortgage lender.

(9) "Residential loan transaction" means any agreement by a consumer with a mortgage broker or mortgage lender in connection with a residential mortgage loan.

(10) "Residential mortgage lender" means a person who engages in a residential mortgage lending activity as a mortgage broker or mortgage lender, or both.

(11) "Residential mortgage lending activity" means an activity, including electronic activity, engaged in for compensation or with the expectation of compensation in connection with a residential loan transaction, including the origination or funding of a residential mortgage loan and the negotiation and placement, or offering to negotiate, place, or find a residential mortgage loan for another person.

(12) "Residential mortgage loan" means:

(a) A federally related mortgage loan, which is entered into on a closed-end credit basis as defined under 12 CFR S.226.2(a)(10).

(b) A consumer loan secured by a mortgage on residential immovable property not specifically contracted for under the Louisiana Consumer Credit Law. Consumer loans otherwise subject to the Residential Mortgage Lending Act may be made contractually subject to the Louisiana Consumer Credit Law by specifically stating that the loan is subject to the Louisiana Consumer Credit Law.

§1084. Prohibition

No person, directly or indirectly, shall engage in a residential mortgage lending activity in this state without complying with the provisions of this Chapter or the rules or regulations promulgated pursuant to this Chapter.

§1085. Rules and regulations

The commissioner shall promulgate rules and regulations in accordance with the Administrative Procedure Act as may be necessary to effectuate the purposes, administration, and enforcement of the provisions of this Chapter.

PART II.

LICENSURE, REGISTRATION, AND CERTIFICATION

§1086. Licensure requirement

A. Beginning January 1, 2000, no person shall engage in any residential mortgage lending activity in this state unless such person has first obtained a license in accordance with the provisions of this Chapter. Any person engaged in residential mortgage lending activities in this state on January 1, 1999, may continue to be so engaged and shall by March 1, 2000, have applied for a license and by July 1, 2000, have obtained a license.

B. Any mortgage broker license in effect on July 9, 1999 shall remain in effect and shall be renewed after January 1, 2000, in accordance with the provisions of this Chapter.

C. Any mortgage broker or lender engaged in residential mortgage lending activities pursuant to an exemption granted under R.S. 6:1087(C), with an active registration filed pursuant to R.S. 6:1087(D), may continue to be so engaged until expiration of the exemption on January 1, 2004. Thereafter, no mortgage broker or lender previously exempt pursuant to R.S. 6:1087(C) may engage in residential mortgage lending activity without a license.

§1087. Exemptions; annual registration statement; fees

A. Any person authorized to engage in business as a credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and any subsidiary of such person, and the employees of such person, shall be exempt from the provisions of this Chapter.

B. The following employers and their employees shall be exempt from the provisions of this Part:

(1) Any person authorized to engage in business as a bank, savings bank, or savings and loan association under the laws of the United States, any state or territory of the United States, or the District of Columbia, and any direct or indirect subsidiaries of such entities, who are subject to general supervision and regulation, or audit or examination, by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia, and the employees of such persons, including those acting as originators and their exclusive agents under written agreement.

(2) Any attorney licensed to practice law when such attorney is not actively engaged in the business of making or brokering residential mortgage loans and the residential mortgage lending activity is incidental to providing legal services.

(3) Any nonprofit corporation exempt from federal taxation under Section 501(c) of the Internal Revenue Code making residential mortgage loans to promote home ownership or home improvements for the disadvantaged.

(4) Any agency of the federal government, or a state or municipal government, or any quasi governmental agency making residential mortgage loans under the specific authority of the laws of any state or the United States.

(5) Any person acting as a fiduciary with respect to any employee pension benefit plan qualified under the Internal Revenue Code who makes residential mortgage loans solely to plan participants from plan assets.

(6) Any real estate investment trust.

(7) Any person acting in a fiduciary capacity conferred by the authority of any court.

(8) Any person licensed as a small business investment company by the United States Small Business Administration.

(9) Any mortgagee in a residential loan transaction in which the mortgagee is the former owner of the residential immovable property.

(10) Repealed by Acts 2005, No. 235, § 2, eff. August 15, 2005. ~~Any person who engages in residential mortgage lending activity in no more than four residential loan transactions over a calendar year, including that person's originators. However, the person shall submit a fee of one hundred dollars and a written request to the commissioner seeking approval to engage in a residential mortgage lending transaction without first complying with the licensing provisions of this Chapter and providing loan information required by the commissioner.~~

(11) Any insurance company authorized by the insurance commissioner of this state or any other state and any resident or nonresident insurance agent who holds an unexpired agent license under Title 22 of the Louisiana Revised Statutes of 1950 who brokers loans exclusively to an insurer.

(12) Any person authorized to engage in business as a licensed lender under the provisions of the Louisiana Consumer Credit Law, R.S. 9:3510 et seq., whose gross revenue from loans subject to the Louisiana Consumer Credit Law exceeds fifty percent of the licensee's gross revenue; however, such persons shall remain subject to the examination and enforcement provisions of R.S. 6:1091 and 1092 for those loans subject to R.S. 6:1081 et seq.

C. (1) Employees and the exclusive agents under written agreement of any person licensed pursuant to this Part which is a direct or indirect subsidiary of a financial or bank holding company, savings bank holding company, or thrift holding company, shall be exempt from the licensure and continuing education provisions of this Part.

(2) Any person exempt from licensure under Subsection B shall engage in residential mortgage lending activities only through natural persons who are licensed as a mortgage broker, mortgage lender, or originator, or who are registered according to the provisions of this Chapter, or who are exempt from the provisions of this Part.

D. Repealed by Acts 2003, No. 875, § 2.

E. The commissioner may promulgate regulations authorizing the licensure and license renewal of persons otherwise exempt from licensure under this Part who wish to be licensed as provided in this Part. The regulations shall establish the conditions under which exempt persons may obtain licensure and the effects of such licensure, including but not limited to the extent of the examination and enforcement authority of the commissioner over such persons, but in no event shall the professional education requirements be less than those applicable to licensees generally.

F. Pursuant to regulations adopted by the commissioner, no residential mortgage lender shall enter into a residential mortgage lending transaction with a person who is not in compliance with the licensing provisions of this Chapter as a mortgage broker, mortgage lender, or originator.

§1088. Application for licensure; issuance of licenses; application and renewal fees

A. An application for a license under this Chapter shall be made in writing, under oath, and on a form prescribed by the commissioner. Each license shall expire on December thirty-first of the year in which the license was issued.

B. Repealed by Acts 2001, No. 617, § 3, eff. June 22, 2001.

C.(1) Each applicant for licensing as a mortgage lender or a mortgage broker, or both, shall, at the time of application for licensure or any renewal of a license, provide evidence of financial responsibility and solvency in one of the following forms:

(a) An audited financial statement prepared by a certified public accountant that meets the independent requirements of the profession. The applicant shall maintain a net worth of fifty thousand dollars or more during the licensing year. The date of the audit must be no more than eighteen months prior to the application or renewal date. The licensee must submit the annual audit to the commissioner within sixty days of receipt of such audit.

(b) A deposit, irrevocably pledged to the commissioner, of fifty thousand dollars in a federally insured depository institution located in Louisiana, designated by the applicant, and approved by

the commissioner. The applicant shall receive all interest earned on the deposit.

(c) Securities of a type approved by the commissioner, including but not limited to bonds of the state or any of its political subdivisions or bonds of the United States government, having a value of not less than fifty thousand dollars irrevocably pledged to the commissioner. The applicant shall receive all interest or dividends earned on the securities.

(d) A surety bond authorized by a surety insurer licensed to do business in this state in the amount of fifty thousand dollars. The surety bond shall name the office of financial institutions and shall be filed with the application or renewal.

(2) An applicant who is a natural person and is employed by a juridical person engaging in residential mortgage lending activities as a mortgage broker or mortgage lender may demonstrate his financial responsibility and solvency by submitting evidence that his employer satisfies the requirements established in this Subsection.

D. If the applicant has multiple office locations, all such locations may be covered by a single license by including in the license application the address of each office operated by the applicant and the name and license number of the individual licensees engaging in residential mortgage lending activities at that location. A copy of the applicant's license certificate shall be prominently displayed at each office at which it does business.

E. The application shall be accompanied by the following nonrefundable fees as determined by and payable to the commissioner:

(1) In the case of an application for a license to act as a mortgage lender, a mortgage broker, or both, a license fee in an amount not to exceed four hundred dollars.

(2) In the case of an application for a license to act as an originator, a license fee in an amount not to exceed one hundred dollars.

(3) An annual license renewal fee for each person licensed as a mortgage broker or mortgage lender in an amount not to exceed three hundred dollars. An annual license renewal application received by the commissioner postmarked after December first shall be accompanied by a late filing fee of two hundred dollars, in addition to the annual license renewal fee.

(4) An annual license renewal fee for each originator in an amount not to exceed one hundred dollars. An annual license renewal application received by the commissioner postmarked after December first shall be accompanied by a late filing fee of fifty dollars, in addition to the annual license renewal fee.

F.(1) Each person licensed as a mortgage broker or mortgage lender shall file an annual license renewal application on or before November first of each year on a form prescribed by the commissioner.

(2) Each originator shall file an annual license renewal application on or before November first of each year on a form prescribed by the commissioner.

(3) Annual renewal applications shall be accompanied by the appropriate filing fee. Annual license renewal applications received by the commissioner postmarked after December first shall be charged a late filing fee.

(4) A license for which a renewal application was timely filed on or before the December thirty-first license expiration date shall remain in force and effect until such application is approved or rejected by the commissioner. Licenses for which renewal applications are filed after December thirty-first shall be deemed to have expired automatically on January first unless the applicant shows good cause for late renewal and pays a reinstatement penalty in an amount not to exceed one thousand dollars. No new license shall be issued upon the filing of a new application by any person against whom any penalty or fee has been imposed unless and until such penalty or fee previously accrued under this Section has been paid.

(5) A natural person, licensed as a mortgage broker, mortgage lender, or originator, who, during the

course of the year, becomes exempt from licensure, or becomes inactive in residential mortgage lending activities, may maintain his license by filing the annual license renewal application, paying the annual license renewal fee, and by satisfying the continuing professional education requirements for renewal established by this Chapter.

G. (1) No license shall be issued unless the commissioner, upon investigation, finds that the financial responsibility, character, and fitness of the applicant, its owners, and its members, if the applicant is a partnership, and its officers and directors, if the applicant is a corporation, are such as to warrant a belief that the business will be conducted honestly and fairly within the purposes of this Chapter. The commissioner may grant restricted or conditional licenses.

(2)(a) Upon written request, an applicant is entitled to a hearing on the question of his qualification for a license if either:

(i) The commissioner has notified the applicant in writing that his application has been denied.

(ii) The commissioner has not issued a license within sixty days of the date the application for licensure was filed.

(b) A request for a hearing may not be made more than thirty days after the applicant has received the written notice notifying him that the application was denied and stating the commissioner's findings in support of the denial of the application.

(3) Beginning July 1, 2000, no natural person shall be licensed as a mortgage broker, mortgage lender, or originator unless the applicant is certified as provided in this Chapter.

§1089. Name or location changes and closures; fees

A.(1) No residential mortgage lender or originator shall conduct the residential mortgage lending activities provided for in this Chapter under any name other than one stated on its license or annual registration statement.

(2) A residential mortgage lender shall notify the commissioner of a change in the location or name of the business or the addition of offices in writing prior to the change. A notice of change of location or name or addition of offices shall be accompanied by a filing fee of one hundred dollars.

(3) A residential mortgage lender shall notify the commissioner of the closing of any office in writing and within thirty days of such closure.

B. (1) Whenever the employment of an originator changes, whether by the originator's action or otherwise, the originator shall give written notice of the change of employment to the commissioner within thirty days of such change. The notice shall be accompanied by a filing fee of fifty dollars.

(2) Whenever the employment of an originator employed by a mortgage broker or mortgage lender changes, whether by the originator's change of employment or otherwise, the employer, unless exempted from the provisions of this Part, shall give written notice of the change in identity to the commissioner within thirty days of the change.

(3) Failure to notify the commissioner within the prescribed time as required by this Section shall result in a one hundred dollar late filing fee.

§1090. Restrictions

A. No license shall be sold or otherwise transferred.

B. (1) No person shall acquire or control a license to make or broker residential mortgage loans through the acquisition or control of fifty percent or more of the ownership interest in a licensee without first having obtained written approval from the commissioner, pursuant to an application for a change of control in ownership of the licensee, filed in the manner and on a form prescribed by the commissioner and accompanied by a fee of three hundred dollars. Any person who acquires controlling interest in a licensee without first having filed an application for change of control with the commissioner shall be deemed to be operating without proper authority under this Chapter and

is subject to the penalties of R.S. 6:1092(C).

(2) For the purposes of this Section, a person acquires or controls the licensee when at least one of the following conditions exists:

(a) The person, directly or acting through one or more other persons, owns, controls, or has the power to vote any class of stock of the corporation.

(b) The person controls in any manner the election of a majority of the directors of the corporation.

(c) The commissioner determines, after notice and an opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or the policies of the licensee.

(3) When the licensee is a limited liability company or a limited liability partnership, the licensee is acquired or controlled if one of the following occurs:

(a) There is a change of managers or general partners.

(b) An existing manager or general partner acquires or controls the licensee as provided in Paragraph (2) of this Subsection.

(c) The commissioner determines that there has been a significant change in the membership or partnership interests, including but not limited to a change in ownership or control, directly or indirectly affecting twenty-five percent or more of the total interest of the licensee.

(4) A corporation that is a licensee shall notify the commissioner within sixty days of a stockholder becoming a principal stockholder.

C. No person may act as an originator in a residential loan transaction unless such person is employed by a licensed mortgage broker or mortgage lender, by a person exempt from the provisions of this Part, or by a person exempt from licensure under the provisions of R.S. 6:1087(C).

D. A mortgage broker shall only broker a residential mortgage loan to a mortgage lender licensed pursuant to this Chapter, to a mortgage lender exempt from the provisions of this Part, or to a mortgage lender exempt from licensure under the provisions of this Chapter.

E. Any person licensed under this Chapter shall engage in residential mortgage lending activities only through a natural person who is licensed as a mortgage broker, mortgage lender, or originator, or who is registered according to the provisions of this Chapter, or who is exempt from the provisions of this Part.

F. Pursuant to regulations adopted by the commissioner, no licensed residential mortgage lender shall enter into a residential mortgage lending transaction with a person who is not in compliance with the licensing provisions of this Chapter as a mortgage broker, mortgage lender, or originator.

G. No residential mortgage lender is permitted to operate a "Net Branch" in this state except as permitted by rules promulgated by the commissioner.

§1091. Recordkeeping and retention; examinations; investigation of complaints

A. Each residential mortgage lender required to be licensed under this Chapter shall maintain in its offices such books, records, and accounts of its residential mortgage lending activities as the commissioner may reasonably require in order to determine whether such residential mortgage lender is complying with the provisions of this Chapter and the rules and regulations promulgated under the provisions of this Chapter. Required records may be maintained in any electronic format consistent with the residential mortgage lender's ordinary business practices unless the licensee receives specific written instructions from the commissioner to the contrary. Such books, records, and accounts shall be maintained separate and apart from any other business in which the mortgage lender or mortgage broker is involved and shall be kept at the location in the state at which the residential mortgage lending activity occurred or at the residential mortgage lender's principal office unless otherwise permitted in writing by the commissioner. Records must be made available for

review or examination at a nonresidential location approved by the commissioner.

B.(1) The commissioner may examine the books, records, and accounts of any licensed residential mortgage lender and of any formerly licensed residential mortgage lender which is engaged in the collection or enforcement of mortgage loans or brokerage agreements. If the records are located outside of the state, the residential mortgage lender shall make them available to the commissioner at a location within this state convenient to the commissioner or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on his behalf.

(2) The commissioner shall assess an examination fee in an amount not to exceed four hundred dollars per location examined. If the examination fee is not paid within thirty days of its assessment, the person examined shall be subject to an administrative penalty of not more than fifty dollars for each day it is delinquent.

C.(1) If the commissioner receives a written complaint pertaining to the residential mortgage activities of a person exempt from the provisions of this Part or this Chapter, or exempt from licensure pursuant to the provisions of R.S. 6:1087, the commissioner may refer the complaint to the exempted entity for comment or response. If the complaint is not thereby resolved, the commissioner may refer such complaints to the appropriate federal or state regulatory, licensing, supervisory, or auditing agency or body.

(2) If the commissioner receives a written complaint pertaining to residential mortgage activities of any other exempt person not provided for in Paragraph (1) of this Subsection or if the federal or state regulatory, licensing, supervisory, or auditing agency or body to which the complaint has been referred fails to respond to the complaint within a reasonable period of time, the commissioner may require the residential mortgage lender to respond in writing to the complaint, may conduct such examinations as he deems necessary in response to such complaint, and may assess such persons an examination fee as provided in this Section.

§1092. Suspension and revocation of licensure; revocation of exemption; disposition of funds; commissioner's interpretations

A. After notice and an opportunity to be heard as provided in the Administrative Procedure Act, the commissioner may suspend or revoke the license of any residential mortgage lender and, as applicable, of any originator who:

(1) Violates any of the provisions of this Chapter or any rule or regulation promulgated or any order, including a cease and desist order, issued pursuant to this Chapter.

(2) Violates any provision of a voluntary consent or compliance agreement which has been entered into with the commissioner.

(3) Has knowingly provided or caused to be provided to the commissioner any false or fraudulent misrepresentation of material fact or any false or fraudulent financial statement, or has suppressed or withheld from the commissioner any information which if submitted by him would have resulted in denial of the license application.

(4) Refuses to permit an examination by the commissioner of his books and affairs, or has refused or failed within a reasonable time to furnish any information or make any report that may be required by the commissioner under the provisions of this Chapter.

(5) Fails to maintain records as required by the commissioner after being given written notice and thirty days within which to correct the failure. The commissioner may grant, on good cause shown, up to two thirty-day extensions within which to correct the recordkeeping violations.

(6) Continues in office any individual with power to direct the management or policies of a person regulated by the Chapter, including but not limited to any officer, director, or manager if such

individual is convicted of, pleads guilty to, or is found guilty after a plea of nolo contendere of any felony under any state or federal law which involves moral turpitude or which involves any aspect of the business of making or brokering residential mortgage loans.

(7) Violates any provision of a regulatory or prohibitory statute and has been found to have violated such statute by the governmental agency responsible for determining such violations.

(8) Misrepresents material facts or makes false promises likely to influence, persuade, or induce an applicant into making a residential mortgage loan or a mortgagor into taking a mortgage loan, or pursues a course of misrepresentation through agents or otherwise.

(9) Misrepresents or conceals material facts, terms, or conditions of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor.

(10) Knowingly engages in any transaction, practice, or course of business which perpetrates a fraud upon any person in connection with the making, purchasing, sale, or brokering of any mortgage loan.

(11) Fails to account for or deliver to any person any personal property obtained in connection with a residential mortgage loan, including but not limited to money, funds, deposits, checks, drafts, mortgages, or other documents or things of value, which has come into his hands and which is not his property, or which he is not entitled by law to retain.

(12) Fails to disburse, without just cause, any funds in accordance with any agreement connected with a residential mortgage loan.

(13) Fails to pay any fee or assessment imposed by this Chapter or by any rule or regulation promulgated in accordance with this Chapter.

(14) Violates the written restrictions or conditions under which the license was issued.

(15) Fails, after notice and without lawful excuse, to obey any order or subpoena issued by the commissioner.

B. After notice and an opportunity to be heard in accordance with the Administrative Procedure Act, the commissioner may revoke the exemption from licensure of any person who:

(1) Has knowingly filed an annual registration statement with the commissioner containing a false or fraudulent misrepresentation of a material fact, or has suppressed or withheld from the commissioner any information which if submitted by him would have resulted in denial of the exemption.

(2) After examination of a written complaint filed with the commissioner, is found to have knowingly engaged in any transaction, practice, or course of business which perpetrates a fraud upon any person in connection with the making, purchasing, sale, or brokering of any residential mortgage loan.

C. In addition to any other authority conferred upon the commissioner by this Chapter or this Title, the commissioner may order refunds of the unauthorized portion of any fee or charge a mortgage broker or originator collects in violation of this Chapter, and may impose a fine or penalty not exceeding one thousand dollars upon any residential mortgage lender who is found in an administrative proceeding to have violated any of the provisions of this Chapter or any rule or regulation promulgated in accordance with this Chapter. Each separate violation shall subject the violator to such fine or penalty and each day the violator acts as a residential mortgage lender without complying with the provisions of this Chapter, or the rules or regulations promulgated in accordance with this Chapter, shall constitute a separate violation.

D. Repealed by Acts 2003, No. 875, § 2.

E. The commissioner may report egregious violations to the attorney general or to the district attorney of the appropriate parish, who may institute the proper proceedings to enjoin the violation and enforce the penalties provided for in this Section.

F. No act done or omitted in conformity with any advisory opinion or interpretation issued by the

office of financial institutions at the time of the act or omission or subsequent to the act or omission shall constitute a violation of this Chapter, notwithstanding that after such act or omission has occurred, such advisory opinion or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Advisory opinions and interpretations of the office of financial institutions shall not be considered rules requiring compliance with the rulemaking process of the Louisiana Administrative Procedure Act. The commissioner and the employees of the office of financial institutions shall have no liability to any person with respect to an advisory opinion or interpretation issued in connection with this Chapter.

G. Any person who acts as a mortgage broker or originator without complying with the licensing provisions of this Chapter shall be subject to forfeiture of the compensation attributable to and received by the mortgage broker or originator in connection with residential mortgage lending activity occurring on or after August 15, 2001; provided that the forfeiture of such compensation by the mortgage broker or originator shall not impair the validity of the note and mortgage.

H. All of the grounds for license suspension or revocation listed in Subsection A of this Section are violations of this Chapter and may serve as the basis for any other enforcement action provided to the commissioner by this Title.

I. The commissioner may share information about any particular entity which is chartered, licensed, or registered by the commissioner with any state or federal agency having concurrent jurisdiction over such entity with the Office of Financial Institutions.

J. The commissioner may make public any final administrative action instituted against a licensee or exempt registrant for a violation of this Chapter, including cease and desist orders, civil money penalty assessments, license suspension, revocation, or application denials.

§1093. Residential Mortgage Lending Board; creation; membership; qualifications; powers and duties

A. (1) There is hereby created the Residential Mortgage Lending Board within the office of financial institutions. The board shall be composed of five members, four of whom shall be appointed by the commissioner from a list of nominees submitted by the Louisiana Mortgage Lenders Association and the remaining member shall be the commissioner or his designee. The commissioner shall appoint at least one mortgage broker and at least one mortgage lender from the list of nominees.

(2) The residential mortgage lenders initially appointed to the board shall not be required to be licensed but shall have been engaged in mortgage lending activities for a minimum of three years. Thereafter, each residential mortgage lender appointed to the board shall be a mortgage broker or mortgage lender licensed or registered as provided for in this Chapter and shall have been engaged in mortgage lending activities for a minimum of three years.

(3) Appointed members shall serve two-year terms; however, no appointed member shall serve more than two consecutive terms.

(4) A vacancy on the board occurring prior to the expiration of a term shall be filled in the same manner as the original appointment for the remainder of the term.

(5) The board shall be domiciled in Baton Rouge, within the office of financial institutions, but may meet elsewhere in the state. The board shall meet at least quarterly at the call of the chairman.

(6) The members of the board shall annually elect a chairman and vice chairman.

(7) Three members of the board shall constitute a quorum.

(8) Members of the board shall receive no per diem, but shall be reimbursed for actual expenses for the attendance of meetings of the board or any of its committees and for time spent on behalf of the board on official business, not to exceed ten days in any month. Members shall be reimbursed for all necessary travel, incidental, and clerical expenses incurred in carrying out the provisions of this

Chapter, as evidenced by voucher and upon approval of the commissioner. The commissioner shall provide staff support to the board.

B. The board shall:

(1) Advise the commissioner in connection with the commissioner's adoption of standards and policies under which credit shall be given for participation in a program of continuing professional education such as the commissioner, in consultation with the board, may consider necessary and appropriate to maintain the highest standards of the residential mortgage lending business in the state.

(2) Engage in such other advisory activities as the commissioner, in his sole discretion, shall deem useful.

C. Repealed by Acts 2001, No. 617, § 3, eff. June 22, 2001.

§1094. Professional education required for licensure; examination; continuing education

A. Beginning July 1, 2000, the commissioner shall require all applicants for licensure to have completed ten hours of professional education prior to the date on which the application is submitted. The commissioner, in consultation with the board, shall establish guidelines, by rule, governing the required professional education.

~~B. Repealed by Acts 2003, No. 875, § 2.~~

B.(1) Beginning August 15, 2005, each applicant for licensure shall pass a written examination administered by the commissioner or by a qualified designee of the commissioner. At least one examination shall be given each year, and additional examinations may be given if the volume of applicants makes additional examinations appropriate.

(2) The required examination shall test the applicant's knowledge of state and federal laws and regulations governing residential mortgage lending, mortgage loan closing and servicing practices, types of residential mortgage loan products available to consumers, and such other matters as may be required by the Examination Review Committee of the Residential Mortgage Lending Board, which shall be comprised of the five members of the board plus three additional committee members selected by the commissioner. The committee shall have the sole authority to review and approve the content of the examinations; however, in the event of a tie vote in the committee, the commissioner's vote shall be dispositive.

(3) The commissioner may impose and collect from the organization administering the examination a fee in an amount not to exceed fifty dollars for each examination graded by the commissioner or his designee.

(4) The provisions of Paragraph (1) of this Subsection shall not apply to an applicant for licensure who:

(a) Has received a bachelor's or master's degree in an area related to finance, banking, or business administration from an accredited college or university and has had within the three years immediately preceding the date of the application twelve months experience in the mortgage lending field as evidenced by documentary proof of full-time employment by a mortgage broker, mortgage lender, originator, or a person exempt from the provisions of this Part or this Chapter, performing the duties of one of the following:

(i) Mortgage broker as defined in R.S. 6:1083(4).

(ii) Mortgage lender as defined in R.S. 6:1083(5).

(iii) Originator as defined in R.S. 6:1083(6).

(iv) Mortgage loan processor, defined as a person who performs clerical duties in connection with residential mortgage loan transactions, including a minimum of four of the following activities performed at the direction of and subject to the supervision of the mortgage broker, mortgage lender, or person exempt from the provisions of this Part or this Chapter who is responsible for such

direction and supervision:

(aa) Collecting financial information and other related documents that are part of the application process.

(bb) Ordering verifications of employment.

(cc) Ordering verifications of deposits.

(dd) Requesting mortgage payoffs.

(ee) Requesting other loan verifications.

(ff) Ordering appraisals.

(gg) Ordering inspections.

(hh) Ordering engineering reports.

(v) Mortgage loan underwriter, defined as a person who performs evaluation duties in connection with residential mortgage loans by reverifying, evaluating for accuracy, and validating the credit documents or appraisals provided by an originator or a mortgage loan processor.

(b) Has had within the three years immediately preceding the date of the application twenty-four months experience in the mortgage lending field as evidenced by documentary proof of full-time employment by a mortgage broker, mortgage lender, originator, or by a person exempt from the provisions of this Part or this Chapter, performing the duties of a:

(i) Mortgage broker as defined in R.S. 6:1083(4)

(ii) Mortgage lender as defined in R.S. 6:1083(5).

(iii) Originator as defined in R.S. 6:1083(6)

(iv) Mortgage loan processor, defined as a person who performs clerical duties in connection with residential mortgage loan transactions, including a minimum of four of the following activities performed at the direction of and subject to the supervision of the mortgage broker, mortgage lender, or person exempt from the provisions of this Part or this Chapter who is responsible for such direction and supervision:

(aa) Collecting financial information and other related documents that are part of the application process.

(bb) Ordering verifications of employment.

(cc) Ordering verifications of deposits.

(dd) Requesting mortgage payoffs.

(ee) Requesting other loan verifications.

(ff) Ordering appraisals.

(gg) Ordering inspections.

(hh) Ordering engineering reports.

(v) Mortgage loan underwriter, defined as a person who performs evaluation duties in connection with residential mortgage loans by reverifying, evaluating for accuracy, and validating the credit documents or appraisals provided by an originator or a mortgage loan processor.

C.(1) Beginning July 1, 2000, all persons applying for reinstatement or renewal of their mortgage broker, mortgage lender, or originator license shall have completed ten hours of continuing professional education in order to reinstate or renew their license on January first of the following year. Each applicant shall submit documentation to the commissioner from a recognized professional educational institution approved by the commissioner showing that the applicant has received instruction in new developments in the residential mortgage lending business occurring since the prior issuance or renewal of such license. Proof of the applicant's completion of these continuing professional requirements shall be submitted as part of the applicant's license renewal application.

(2) The commissioner may impose and collect course evaluation fees in an amount not to exceed five hundred dollars paid by the organization sponsoring the continuing education program for

recognition that the program satisfies the commissioner's professional education guidelines.

(3) The commissioner may impose and collect course recognition fees in an amount not to exceed fifty dollars, paid by the person participating in a continuing education program which has not been recognized by the commissioner to determine if the course will satisfy the commissioner's guidelines governing required professional education.

D.(1) Beginning July 1, 2000, a nonresident applying for a license to conduct residential mortgage lending activities in the state shall demonstrate that he has completed the educational requirements established under the provisions of this Chapter or is entitled to certification by reciprocity. When the commissioner, in consultation with the board, determines that a nonresident's state has requirements equivalent to or higher than the educational requirements provided for in this Chapter for insuring the qualifications of those engaging in the residential mortgage lending business, the commissioner may issue licenses to such nonresident applicants who have completed the professional education requirements applicable to Louisiana licensees or who have satisfied equivalent professional educational requirements in such other state or jurisdiction.

(2) The nonresident's application for educational certification by reciprocity shall be submitted as part of the nonresident's application for licensure. The nonresident's certification by reciprocity may be renewed in the same manner as provided for other renewals or by demonstrating to the commissioner that he has satisfied comparable requirements in the state or jurisdiction of his domicile.

(3) The commissioner may impose and collect reciprocity analysis fees in an amount not to exceed two hundred dollars paid by the nonresident seeking determination by the commissioner whether the nonresident's state's certification and continuing education requirements are equivalent to or higher than those imposed by the commissioner or whether additional continuing education courses will be required.

E. Beginning in the year 2001, any person receiving certification by reciprocity or examination on July first or later shall not be required to have the ten hours of continuing professional education required for license renewal until December thirty-first of the following year.

F. No person shall hold himself out as being or advertise as a certified mortgage broker, mortgage lender, or originator unless such person has completed the educational requirements established in this Section.

G. Any person engaged in residential mortgage lending on or before August 15, 2003, pursuant to exemptions previously provided by R.S. 6:1087, may obtain a license without completing the professional education or examination requirements in this Section, if they pay all applicable fees and submit completed applications on or before January 1, 2004. Any person applying for licensure pursuant to this Subsection shall comply with the financial responsibility, character, and fitness requirements contained in R.S. 6:1088.

PART III. RESIDENTIAL MORTGAGE LOANS

§1095. Scope

A.(1) The provisions of this Part shall govern and control the rates, fees, charges, and disclosures applicable to residential mortgage loans.

(2) Repealed by Acts 2001, No. 617, § 3, eff. June 22, 2001.

B. All fees and charges authorized under this Part, whether or not such fees and charges constitute or are considered to be loan finance charges, shall be deemed to be material to the determination of the interest rate for purposes of exportation to borrowers residing in other states under the most favored lender doctrine of federal law.

C. As a general rule of construction, comparable rules, definitions, and principles under the Federal Real Estate Settlement Procedures Act and Regulation X of the office of the secretary of the Department of Housing and Urban Development, the Federal Truth in Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve System may be looked to for guidance in further interpreting terms and concepts that are not otherwise defined or specified in the provisions of this Part. Fees and charges that are not classified as or considered as finance charges under the Federal Truth in Lending Act and Regulation Z are not considered to be loan finance charges for the purposes of this Part.

D. This Part shall not prohibit the imposition of fees and charges which are otherwise permissible under R.S. 6:548.

§1096. Residential mortgage loans

A. Any consumer who has contracted for a federally related mortgage loan may agree to pay fees and interest in excess of the maximum amounts authorized by the laws of this state and as such shall be prohibited from asserting a claim or defense of usury or of the taking of interest in excess of the maximum rate of conventional interest. Any person signing as a co-maker, guarantor, or endorser for such consumer shall also be prohibited from asserting any such claim or defense.

B. The parties to a residential mortgage loan, other than a federally related mortgage loan, may agree to the payment of broker and other fees and interest in connection with a closed-end credit transaction, or finance charges calculated as a monthly periodic rate over the course of a year in connection with an open-end credit transaction otherwise subject to the Louisiana Consumer Credit Law, but made contractually subject to the provisions of this Chapter, as those terms are defined in federal Regulation Z, 12 CFR Section 226.1 et seq., up to an annual percentage rate as computed pursuant to 12 CFR Section 226.22 for closed-end credit and 12 CFR Section 226.14 (c) for open-end credit in an amount not to exceed the greater of either twenty-one percent or fifteen percentage points above the Federal Reserve Board of Governors approved "Discount Rate" published semi-annually in the Wall Street Journal on the first business day in January and July in the year the loan was originated, consummated, or renewed.

C. Unless otherwise provided by federal law, variable rate, or adjustable rate mortgage loans shall be governed by the provisions of R.S. 9:3504(D).

D. The general prohibition against interest upon accrued interest shall not apply to residential mortgage loans governed by this Part.

E.(1) In the absence of federal law or rules and regulations of federal agencies, a consumer may prepay in full the unpaid balance of his residential mortgage loan at any time.

(2) A mortgage lender may contract for and receive a prepayment penalty in an amount not to exceed:

- (a) Five percent of the unpaid principal balance if the loan is prepaid in full during the first year of its term.
- (b) Four percent of the unpaid principal balance if the loan is prepaid in full during the second year of its term.
- (c) Three percent of the unpaid principal balance if the loan is prepaid in full during the third year of its term.
- (d) Two percent of the unpaid principal balance if the loan is prepaid in full during the fourth year of its term.
- (e) One percent of the unpaid principal balance if the loan is prepaid in full during the fifth year of its term.

F. Agreements to compensate mortgage brokers through yield spread premiums for goods, facilities, and services actually provided in connection with a residential loan transaction shall be valid and enforceable.

G.(1) No mortgage broker shall assess, contract for, or receive any type of fee, interest, or other charge in advance, except for expense deposits from a potential borrower for the procurement of a loan. An advance expense deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, credit reports performed by an independent person and required by the originating lender for the evaluation of the potential borrower's loan application, or the actual cost of any charge of no more than twenty-five dollars assessed to a mortgage broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector". Any portion of an advance expense deposit which exceeds the actual cost of any appraisal, title search, credit reports, or charge assessed to a mortgage broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector" shall be refunded to the borrower or credited to the borrower's account at the time of the closing of the loan.

(2) No mortgage lender shall assess, contract for, or receive any advance expense deposit for third party settlement services in advance that exceeds the good faith estimate of the actual cost of the settlement service. Any portion of an advance expense deposit which exceeds the actual cost of a third party settlement service shall be refunded to the borrower or credited to the borrower's account at the time of the closing of the loan.

H.(1) A residential mortgage lender shall provide the consumer, within five days of the date a written request is received from the consumer, with the amount necessary to prepay the account in full, and if the amount disclosed includes an amount which is required to be refunded, the amount of such refund.

(2) A consumer shall be entitled to receive one such disclosure of information statement each year without charge. Thereafter, the extender of credit may impose a reasonable fee to cover the cost of providing an additional disclosure statement; however, the charge imposed must be disclosed to the consumer before furnishing such disclosure statement.

I. (1) The person acting as originator in a residential loan transaction shall sign the original application.

(2) An originator may only originate residential mortgage loans for one employer.

§1097. Residential mortgage loan fees and charges

A. Notwithstanding any other law to the contrary, including but not limited to R.S. 9:3500, in addition to those fees, charges, costs, and expenses not considered interest or defined as finance charges under federal Regulation Z, the parties to a federally related mortgage loan may agree to the payment of any fees, charges, costs, and expenses, and the amounts thereof, including but not limited to the types of fees, charges, costs, and expenses listed in Subsection B of this Section, if the

fees, charges, costs, and expenses, and the amounts thereof, or the methods for fixing such, are provided in a writing signed by the consumer.

B. The parties to a consumer loan, secured by a mortgage on residential immovable property, which is made contractually subject to the provisions of this Chapter, may agree to pay the following fees, charges, costs, and expenses:

(1) Charges for the prepayment of the loan or any installment or part of the loan prior to the time fixed for payment.

(2) Charges, in the amount of five percent of the unpaid amount, assessed for nonpayment of the loan or any installment or part of the loan after the loan or installment of principal or interest has become delinquent and is not timely paid.

(3) Costs of collection and reasonable attorney fees not in excess of twenty-five percent of the unpaid debt after default, when the debt has been referred to an attorney for collection.

(4) Fees, taxes, charges, and other expenses incurred in making the loan which are collected from or paid by or on behalf of the borrower, if such fees, taxes, charges, or other expenses are actually paid to or payable to persons other than the lender or the person making the loan or any employee of such lender or person.

(5) Charges or premiums for credit life insurance actually written on the life of the borrower or endorser in an amount not to exceed the total sum payable under the residential mortgage loan, including all interest, fees, costs, and charges.

(6) N.S.F. check charges in an amount not to exceed the greater of five percent of the amount of the check or twenty-five dollars.

(7) Other fees, charges, costs, and expenses not defined as finance charges under federal Regulation Z, if the fees, charges, costs, and expenses, or the methods for fixing such, are provided in a writing signed by the consumer.

§1098. Residential mortgage loan brokerage contracts

A. Each residential mortgage loan brokerage contract shall be in writing and signed by all contracting parties. The mortgage broker shall retain a signed copy of the residential mortgage loan brokerage contract in the customer's file.

B. The mortgage broker must provide the prospective borrower with a written "Mortgage Loan Origination Agreement" no later than three days after the initial loan application date. The written agreement shall describe the nature of the mortgage broker's relationship with the borrower and the manner in which the mortgage broker is compensated for his services. Such disclosures may be incorporated into the brokerage contract or provided in a separate document.

C. The written disclosures provided to the borrower shall also contain the following information as applicable:

(1) The name, address, and telephone number of the originator.

(2) The name, address, and telephone number of the residential mortgage lender by whom the originator is supervised.

(3) The name, address, and telephone number of the residential mortgage lender by whom the originator is employed.

D. Failure of the mortgage broker to provide the disclosures required by this Section shall not invalidate any residential mortgage loan entered into by a consumer through the efforts of the mortgage broker, but shall subject the mortgage broker to a refund of any brokerage fees obtained in connection with such residential mortgage loan.

§1099. Criminal penalties

A. In addition to the authority to report egregious violations as provided in R.S. 6:1092(E), the commissioner may report the violations of the following provisions to the attorney general or to the district attorney of the appropriate parish, who may institute the proper proceedings to enjoin the violation and enforce the penalties provided for herein.

B. It shall be a misdemeanor for a mortgage broker or lender to knowingly collect advance fees in excess of those provided for in R.S. 6:1096(G) , and upon conviction he may be sentenced to pay a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

C. Any person who knowingly provides false or misleading information to the commissioner on an application and such information is material to approval of the application is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

D. Any licensee or exempt registrant who fails to account for or deliver to any person any money, funds, deposits, checks, drafts, mortgages, or other documents, or things of value to the borrower in violation of the provisions of this Chapter is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

E. Any licensee who fails to disburse, without just cause, any funds belonging to the borrower is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.

F. A lender, broker, or originator who knowingly operates without a license or exempt registration is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than five hundred dollars and not more than one thousand dollars, or to imprisonment not exceeding one year, or both.